

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT ASSET MANAGEMENT,
LLC,

Plaintiff,

- against -

DANIEL ZANGER,

Defendant.

Index No. 07-CV-6431 (JSR)

ECF

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE*
TO PRECLUDE DEFENDANT FROM INTRODUCING EVIDENCE CONCERNING
DEFENDANT'S OBLIGATION TO COVER MARGIN CALLS IN IFL'S ACCOUNT**

I, Craig Stuart Lanza, declare under penalty of perjury as follows:

1. I am an attorney at the law firm of Balestriere Lanza PLLC, attorneys for Plaintiff Independent Asset Management ("IAM"). I submit this declaration in support of Plaintiff's Motion *In Limine* to Preclude Defendant from Introducing Evidence Concerning Defendant's Obligation to Cover Margin Calls in IFL's Account.

2. Attached to this declaration, under the identified exhibit tabs, are true and correct copies of the following documents:

Exhibit A - IFL Margin Report

Exhibit B - Zanger Deposition (excerpts)

Exhibit C - October Instant Message Communication

Exhibit D - November Instant Message Communication

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 21, 2008
New York, New York

s/ Craig Stuart Lanza

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on the following counsel of record on July 21, 2008, via the methods listed below:

By ECF

Mike Silberfarb

MSilberfarb@JonesDay.com

Attorneys for Defendant

s/ Craig Stuart Lanza _____

Craig Stuart Lanza

BALESTRIERE LANZA PLLC

225 Broadway, Suite 2900

New York, NY 10007

Telephone: (212) 374-5404

Facsimile: (212) 208-2613

Attorneys for Plaintiff

Exhibit A

TO MARGIN CALL

18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	391,412.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,586,395.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	197,451.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	3,884.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	583,978.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	2,118,558.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	258,464.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	11,757.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	558,781.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,215,918.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,845,404.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	184,198.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,592,397.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	3,285.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	891,440.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	20,397.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	823,932.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	787,578.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	201,101.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,728,991.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,208,983.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	354,300.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	951,757.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	149,277.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	483,387.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	934,740.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	84,553.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	154,072.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	87,518.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	244,540.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	406,128.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	411,221.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	764,185.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	19,068.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	352,403.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,480,868.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	391,357.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	33,052.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	25,528.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	4,008.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	1,417,891.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	161,922.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	647,160.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	950,829.00
18203	18203	CS	41.50	378328	Independent Fund Limited	H	\$	448,956.00

T = Regulation T Call
H = House Call
NY = NYSE Call

45 Margin Calls

GSFC	001	378328	4LGD	INDEPENDENT FUND LIMITED	8-Nov-06	18-Nov-08	\$	134,372
GSFC	001	378326	4LGD	INDEPENDENT FUND LIMITED	30-Nov-06	7-Dec-08	\$	2,850,481

DAY TRADING VIOLATIONS

Exhibit B

1

ZANGER

57

2 that I would harm IFL.

3 Q You are done with your answer?

4 A I believe so.

5 Q You never threatened to drain the
6 fund?

7 A I don't have that recollection.

8 Q Let's turn to November of 2006.
9 You had a day trading call on November 30th of
10 2006; is that correct?

11 A What date was that?

12 Q November 30th.

13 A Of 2006?

14 Q Yes.

15 A A day trading call on
16 November 30th?

17 Q Yes.

18 A There was a day trading call.

19 Q And you chose not to cover that
20 day trading call; is that correct?

21 MR. SEAR: Objection to the form.

22 Answer it as best that you can.

23 A Yeah, I chose not to send in
24 payment for that call.

25 Q And the reason that you chose not

1

ZANGER

58

2

to send in payment was because you didn't want
3 to experience a three- to four-week wait; is
4 that correct?

5

A No.

6

Q So you never said no more three-
7 to four-week waits in relation to that

8

November 30, 2006 violation?

9

MR. SEAR: Objection to the form.

10

A Yeah, I may have said that.

11

Q But a three- to four-week wait had
12 nothing to do with your choosing to cover it?

13

MR. SEAR: Objection to the form.

14

Answer it.

15

A Well, it had something to do with
16 it, yes.

17

Q You were aware that if you didn't
18 cover that call that the fund could no longer
19 actively trade; is that correct?

20

A Well, let's say that it could no
21 longer actively trade at Goldman Sachs, but it
22 could actively trade.

23

Q If the fund could no longer

24

actively trade, you can get your money back;

25

is that correct?

Exhibit C

oct 10 06 im
gbszele (8:30:48 AM): hey Dan - you're on a margin call - can you resolve that this
AM as soon as possible please - thanks
gbszele (10:31:05 AM): hey Dan - you're on a margin call - can you resolve that this
AM as soon as possible please - thanks
chartpattern (10:31:15 AM): done
gbszele (10:45:49 AM): good month - look out though - market may turn soon
chartpattern (10:48:15 AM): k

Exhibit D

nov 10 06 im

gbszele (3:22:12 PM): dan have you spoken with Gia on your margin call?
chartpattern (3:22:18 PM): yup
gbszele (3:22:19 PM): she keepd emailing me
gbszele (3:22:21 PM): keeps
gbszele (3:34:00 PM): dan we need to talk
gbszele (3:34:15 PM): gia said she has not heard from you
chartpattern (3:34:29 PM): I'm not sending in any more money
chartpattern (3:34:38 PM): no more 3-4 week waits
gbszele (3:35:33 PM): you have a margin call - again - why and what do you propose to do?
chartpattern (3:35:41 PM): nothing
chartpattern (3:35:49 PM): I liquidated
chartpattern (3:35:55 PM): today
chartpattern (3:36:05 PM): its all I will or can do
gbszele (3:36:08 PM): so the why is she complaining
gbszele (3:36:14 PM): then
chartpattern (3:36:14 PM): nos ure
chartpattern (3:36:17 PM): not sure
gbszele (3:39:33 PM): there is nothin i can do about the wires - it is out of my hands - there are laws and they have to be followed
chartpattern (3:39:41 PM): ok
chartpattern (3:39:55 PM): last time cost me over 600K
chartpattern (3:40:24 PM): had to liquidate my calls in CME the day before it shot up 30 points
chartpattern (3:40:30 PM): never again
gbszele (3:47:15 PM): dan- you are the one creating the problem with the calls - you are costing yourself- why do you keep doing it? I 'm not the one trading - you are